

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 02, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JACK W. J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:22-CV-3046-RMP

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Jack W.J.¹, ECF No. 11, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 12. Plaintiff seeks judicial review, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), of the Commissioner's partial denial of his claim for Social Security Income ("SSI") and

¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and last initial.

1 denial of his claim for Disability Insurance Benefits (“DIB”) under Titles XVI and
2 Title II, respectively, of the Social Security Act (the “Act”). *See* ECF No. 11 at 1–2.

3 Having considered the parties’ motions, the administrative record, and the
4 applicable law, the Court is fully informed. For the reasons set forth below, the
5 Court denies Plaintiff’s Motion for Summary Judgment, ECF No. 11, and grants
6 summary judgment in favor of the Commissioner, *see* ECF No. 12.

7 **BACKGROUND**

8 ***General Context***

9 Plaintiff applied for SSI and DIB on approximately January 19, 2017, alleging
10 onset on March 1, 2016. Administrative Record (“AR”)² 17, 301–11. Plaintiff was
11 46 years old on the alleged disability onset date and asserted that he was unable to
12 work due to antisocial personality disorder, schizotypal personality, post-traumatic
13 stress disorder, depression, anxiety/panic disorder, degenerative disc disease and
14 back pain into hips, cervical spondylosis with ulnar neuropathy, right knee pain,
15 right foot injury and pain, and arthritis. AR 301–11, 325. Plaintiff reported that he
16 stopped working in November 2013. AR 325. Plaintiff’s claims proceeded to a
17 hearing in July 2018, and the ALJ issued an unfavorable decision in October 2018.
18 AR 14–30, 56–86. The Appeals Council denied review, and Plaintiff sought review

19
20 ² The Administrative Record is filed at ECF No. 8.

1 in the U.S. District Court for the Eastern District of Washington. United States
2 District Court Judge Robert H. Whaley granted a Stipulated Motion for Remand on
3 October 22, 2019. AR 1251–53.

4 On remand, Administrative Law Judge (“ALJ”) Glenn Meyers held a hearing
5 telephonically from Seattle, Washington. AR 1150–52. Plaintiff was present with
6 counsel D. James Tree. AR 1150–52. Plaintiff and vocational expert Anne Jones
7 testified in response to questions from ALJ Meyers and counsel. AR 1152–75. ALJ
8 Meyers held a supplemental hearing, telephonically, on December 9, 2021. AR
9 1179. Plaintiff was represented at the supplemental hearing by D. Robert Tree, and
10 again testified in response to questions from ALJ Meyers and counsel. AR 1177,
11 1186–97. The ALJ and Plaintiff’s counsel also questioned medical expert Dr. Omar
12 Hussamy and vocational expert Robert Simmons. AR 1178–1204. ALJ Meyers
13 issued a partially favorable decision on January 12, 2022, and the Appeals Council
14 declined review. AR 1115–35; *see* ECF No. 11 at 3 (asserting that the ALJ’s
15 decision became the final agency decision when the Appeals Council did not assume
16 jurisdiction of the case) (citing 20 C.F.R. §§ 404.984(a), 416.1484(a)).

17 / / /

18 / / /

19 / / /

20 / / /

1 ***ALJ's Decision***

2 As to the five-step sequential evaluation process, ALJ Meyers found:

3 **Step one:** Plaintiff meets the insured status requirements of the Act through
4 March 31, 2016. AR 1118. Plaintiff has not engaged in substantial gainful activity
5 since March 1, 2016, the alleged onset date. AR 1118.

6 **Step two:** Plaintiff has the following severe impairments that are medically
7 determinable and significantly limit his ability to perform basic work activities: left
8 foot fracture with arthritis; status-post open reduction internal fixation (“ORIF”)
9 surgery; status post-ORIF with plates in foot; lumbar degenerative disc disease;
10 cervical degenerative disc disease; status post-fusion of the cervical spine;
11 depressive disorder; and anxiety disorder, pursuant to 20 C.F.R. §§ 404.1520(c) and
12 416.920(c). AR 1119. In determining Plaintiff’s severe impairments, ALJ Meyers
13 noted that the Plaintiff’s “record also contains evidence pertaining to conditions that
14 do not constitute severe impairments.” AR 1119. ALJ Meyers found that right
15 shoulder pain is nonsevere as it “resolved with treatment and did not result in any
16 significant persistent, functional limitations, rendering it nonsevere.” AR 1119.
17 ALJ Meyers further found that bilateral cubital tunnel syndrome, sleep apnea, and
18 substance use disorder were nonsevere because they did not result in functional
19 limitations for the requisite 12-month period. AR 1119. As to a diagnosis of
20 dissociative identity disorder, the ALJ did not give the mental health counselor’s
21

1 assessment weight because: “[t]he diagnosis was based solely on the claimant’s
2 subjectively reported symptoms and is not corroborated elsewhere in the record”;
3 and “the counselor is not a medically acceptable source for the purpose of
4 establishing the existence of medically determinable impairments.” AR 1119.

5 The ALJ affirmed that he considered all of Plaintiff’s impairments, including those
6 that he found to be nonsevere, in assessing Plaintiff’s residual functional capacity
7 (“RFC”). AR 1120.

8 **Step three:** The ALJ concluded that Plaintiff does not have an impairment, or
9 combination of impairments, that meets or medically equals the severity of one of
10 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§
11 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). AR 1120.

12 In reaching this conclusion, the ALJ found that: Plaintiff’s spine impairment
13 does not meet or medically equal Listings 1.15 or 1.16; Plaintiff’s joint impairments
14 do not meet or medically equal Listing 1.18; and Plaintiff’s mental impairments do
15 not meet or medically equal Listing 12.04. AR 1120.

16 With respect to Plaintiff’s mental impairments, the ALJ addressed the
17 “paragraph B’ criteria and found that Plaintiff’s mental impairments, considered
18 singly and in combination, do not meet or medically equal the criteria of Listing
19 12.04 and 12.06 since Plaintiff’s impairments do not result in one extreme limitation
20 or two marked limitations in a broad area of functioning. AR 1120. The ALJ found
21

1 that Plaintiff is moderately limited in: understanding, remember, or applying
2 information; interacting with others; concentrating, persisting, or maintaining pace;
3 and adapting or managing oneself. AR 1120–21. The ALJ cited to portions of the
4 record explaining his findings. AR 1120–21.

5 The ALJ also memorialized his finding that Plaintiff’s mental impairments fail
6 to satisfy the “Paragraph C” criteria. AR 1121.

7 **Residual Functional Capacity (“RFC”):** The ALJ found that, since March 1,
8 2016, Plaintiff has had the RFC to perform: sedentary work as defined in 20 §§ CFR
9 404.1567(a) and 416.967(a) except that he can lift and/or carry ten pounds
10 frequently and occasionally; requires a sit/stand at will option to be provided in the
11 workplace; can occasionally stoop; cannot crouch, crawl, kneel, or climb ramps,
12 stairs, ropes, ladders, or scaffolds; can frequently reach, handle, finger, and feel;
13 cannot perform overhead reaching; can frequently reach at or below shoulder level;
14 and cannot work at heights or in proximity to hazardous conditions. Plaintiff can be
15 required to remember, understand, and carry out simple and routine instructions and
16 tasks consistent with the learning and training requirements of SVP level one and
17 two jobs. He cannot have contact with the public. However, he can work in
18 proximity to, but not in coordination with, coworkers, and he can have occasional
19 contact with supervisors. AR 1122.

1 In determining Plaintiff's RFC, the ALJ found that Plaintiff's "medically
2 determinable impairments could reasonably be expected to cause the alleged
3 symptoms; however, [Plaintiff's] statements concerning the intensity, persistence
4 and limiting effects of these symptoms are not entirely consistent with the medical
5 evidence and other evidence in the record for the reasons explained in this decision."
6 AR 1123.

7 **Step four:** The ALJ found that, since March 1, 2016, Plaintiff has been unable
8 to perform any past relevant work. AR 1133.

9 **Step five:** The ALJ found that Plaintiff has at least a high school education
10 and was a younger individual (age 45-49), on the alleged disability onset date. AR
11 1133. The ALJ found that Plaintiff's age category changed to an individual closely
12 approaching advanced age on October 11, 2019. AR 1133 (citing 20 C.F.R. §§
13 404.1563 and 416.963. The ALJ found that "[p]rior to October 11, 2019,
14 transferability of job skills is not material to the determination of disability because
15 using the Medical-Vocational Rules as a framework supports a finding that the
16 claimant is 'not disabled' whether or not [Plaintiff] has transferable job skills." AR
17 1133. However, the ALJ continued, "Beginning on October 11, 2019, [Plaintiff] has
18 not been able to transfer job skills to other occupations." AR 1133 (citing SSR 82-
19 41; 20 C.F.R. Part 404, Subpart P, Appendix 2)." With respect to the period before
20 Plaintiff's age category changed on October 11, 2019, the ALJ found that,
21

1 considering Plaintiff's age, education, work experience, and RFC, there were jobs
2 that existed in significant numbers in the national economy that Plaintiff could have
3 performed. AR 1133 (citing 20 C.F.R. §§ 404.1569, 404.1569a, 416.969, and
4 416.969a). Specifically, the ALJ recounted that the vocational expert identified the
5 following representative occupations that Plaintiff would be able to perform with the
6 RFC: office helper (light, unskilled work, with around 75,000 jobs nationally);
7 routing clerk (light, unskilled work, with around 35,000 jobs nationally); and
8 collator operator (light, unskilled work with around 30,000 jobs nationally). AR
9 1134. The ALJ concluded that Plaintiff had not been disabled within the meaning of
10 the Act prior to October 11, 2019 or at any time through March 31, 2016, the date
11 last insured, but Plaintiff qualifies as disabled since his age category changed on
12 October 11, 2019. AR 1134–35.

13 **LEGAL STANDARD**

14 ***Standard of Review***

15 Congress has provided a limited scope of judicial review of the
16 Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the
17 Commissioner's denial of benefits only if the ALJ's determination was based on
18 legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d
19 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's]
20 determination that a claimant is not disabled will be upheld if the findings of fact are
21

1 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
2 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere
3 scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
4 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir.
5 1989). Substantial evidence “means such evidence as a reasonable mind might
6 accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389,
7 401 (1971) (citations omitted). “[S]uch inferences and conclusions as the
8 [Commissioner] may reasonably draw from the evidence” also will be upheld. *Mark*
9 *v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the
10 record, not just the evidence supporting the decisions of the Commissioner.
11 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

12 A decision supported by substantial evidence still will be set aside if the
13 proper legal standards were not applied in weighing the evidence and making a
14 decision. *Brawner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.
15 1988). Thus, if there is substantial evidence to support the administrative findings,
16 or if there is conflicting evidence that will support a finding of either disability or
17 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,
18 812 F.2d 1226, 1229–30 (9th Cir. 1987).

19 / / /

20 / / /

Definition of Disability

The Social Security Act defines “disability” as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A). The Act also provides that a claimant shall be determined to be under a disability only if his impairments are of such severity that the claimant is not only unable to do his previous work, but cannot, considering the claimant’s age, education, and work experiences, engage in any other substantial gainful work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

Sequential Evaluation Process

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled. 20 C.F.R. §§ 416.920, 404.1520. Step one determines if he is engaged in substantial gainful activities. If the claimant is engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §§ 416.920(a)(4)(i), 404.1520(a)(4)(i).

If the claimant is not engaged in substantial gainful activities, the decision maker proceeds to step two and determines whether the claimant has a medically

1 severe impairment or combination of impairments. 20 C.F.R. §§ 416.920(a)(4)(ii),
2 404.1520(a)(4)(ii). If the claimant does not have a severe impairment or
3 combination of impairments, the disability claim is denied.

4 If the impairment is severe, the evaluation proceeds to the third step, which
5 compares the claimant's impairment with listed impairments acknowledged by the
6 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §§
7 416.920(a)(4)(iii), 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If
8 the impairment meets or equals one of the listed impairments, the claimant is
9 conclusively presumed to be disabled.

10 If the impairment is not one that is conclusively presumed to be disabling, the
11 evaluation proceeds to the fourth step, which determines whether the impairment
12 prevents the claimant from performing work that he has performed in the past. If the
13 claimant can perform his previous work, the claimant is not disabled. 20 C.F.R. §§
14 416.920(a)(4)(iv), 404.1520(a)(4)(iv). At this step, the claimant's RFC assessment
15 is considered.

16 If the claimant cannot perform this work, the fifth and final step in the process
17 determines whether the claimant is able to perform other work in the national
18 economy considering his residual functional capacity and age, education, and past
19 work experience. 20 C.F.R. §§ 416.920(a)(4)(v), 404.1520(a)(4)(v); *Bowen v.*
20 *Yuckert*, 482 U.S. 137, 142 (1987).

1 The initial burden of proof rests upon the claimant to establish a prima facie
 2 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
 3 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
 4 is met once the claimant establishes that a physical or mental impairment prevents
 5 him from engaging in his previous occupation. *Meanel*, 172 F.3d at 1113. The
 6 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
 7 can perform other substantial gainful activity, and (2) a “significant number of jobs
 8 exist in the national economy” which the claimant can perform. *Kail v. Heckler*, 722
 9 F.2d 1496, 1498 (9th Cir. 1984).

10 ISSUES ON APPEAL

11 The parties’ motions raise the following issues regarding the ALJ’s decision:

- 12 1. Did the ALJ erroneously assess Plaintiff’s subjective symptom
- 13 complaints?
- 14 2. Did the ALJ erroneously evaluate five mental health source opinions in
- 15 the record?

16 *Subjective Symptom Testimony*

17 Plaintiff argues that the ALJ did not offer specific, clear, and convincing
 18 reasons for discounting Plaintiff’s subjective symptom testimony. ECF No. 11 at
 19 18–19. Plaintiff argues that the ALJ could not base his adverse finding on the
 20 validity of Plaintiff’s symptom testimony solely on a lack of support from objective
 21 findings. *Id.* at 19 (citing SSR 16-3p; *Light v. Comm’r*, 119 F.3d 789, 792 (9th Cir.

1 1997)). Plaintiff maintains that the ALJ failed to provide specific evidence to refute
2 particular symptom testimony. *Id.* at 20. Plaintiff further argues that mere
3 improvement of his mental symptoms does not equate to nondisability. *Id.* at 21
4 (citing *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001); *Garrison*, 759
5 F.3d at 1018–19). Lastly, Plaintiff argues that the ALJ’s reasoning that Plaintiff
6 independently performs his daily activities fails “because the ALJ provides no
7 evidence that these minimal activities were performed in a manner that indicate
8 [Plaintiff] would be able to work consistently for eight hours a day, five days a
9 week.” *Id.* at 21.

10 The Commissioner responds that substantial evidence supports the ALJ’s
11 determination that “the medical evidence and Plaintiff’s activities did not support his
12 claims of debilitation.” ECF No. 12 at 3. Specifically, the Commissioner argues
13 that the record contradicts Plaintiff’s claims that he cannot handle the sitting,
14 standing, and walking requirements of even sedentary work. *Id.* (citing AR 1122–25
15 for support that Plaintiff consistently displayed normal extremity strength, sensation,
16 and gait, as well as no focal neurologic deficits). The Commissioner also maintains
17 that the ALJ cited to substantial evidence showing some persistent symptoms, but
18 “primarily show[ing] stability with treatment and reflect[ing] modest mental status
19 examination findings with largely intact memory and concentration, as well as
20 appropriate interpersonal interactions and behavior with providers.” *Id.* at 4–5
21

1 (citing AR 1125–27). The Commissioner maintains, “This history reasonably cast
2 doubt over debilitating claims.” *Id.* at 5. The Commissioner further cites the Court
3 to treatment records indicating that Plaintiff’s mental health symptoms improved
4 with treatment, worsened when he skipped doses of his prescribed medication, and
5 resolved again when he resumed “regular dosing.” *Id.* (citing AR 845–46, 1613–
6 14).

7 In deciding whether to accept a claimant’s subjective symptom testimony, an
8 ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th
9 Cir. 1996). First, the ALJ must evaluate “whether the claimant has presented
10 objective medical evidence of an underlying impairment ‘which could reasonably be
11 expected to produce the pain or other symptoms alleged.’” *Lingenfelter v. Astrue*,
12 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344
13 (9th Cir. 1991)). Second, if the first test is met and there is no evidence of
14 malingering, “the ALJ can reject the claimant’s testimony about the severity of her
15 symptoms only by offering specific, clear and convincing reasons for doing so.”
16 *Smolen*, 80 F.3d at 1281.

17 The ALJ must make findings that are sufficiently specific to permit the
18 reviewing court to conclude that he did not arbitrarily discredit the claimant’s
19 testimony. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014); *Tommasetti v.*
20 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). In determining how much to credit a
21

1 claimant’s testimony, the ALJ may consider the objective medical evidence, the
2 claimant’s treatment history, the claimant’s daily activities, inconsistencies in
3 testimony, effectiveness or adverse side effects of any pain medication, and relevant
4 character evidence. *See Ghanim*, 763 F.3d at 1163; *Tommasetti*, 533 F.3d at 1039.

5 The ALJ reasoned that Plaintiff’s activities, as evidenced throughout the
6 record, are “not inconsistent with the [RFC] and . . . do not support debilitating
7 limitations.” AR 1128. As noted in the record, Plaintiff reported that, with the
8 exception of shopping, he independently performed his activities of daily living
9 during the relevant period between 2016 and 2019. AR 1903. For instance, he
10 prepared his own meals, did housework and laundry, cared for his hygiene, managed
11 his prescriptions, scheduled his own appointments, and rode motorcycles for
12 enjoyment. AR 1903. He reported to a provider in 2019 that he had gone on a
13 “long” hike. AR 2360. Plaintiff testified that, even though his conditions had
14 worsened by the time of the December 2021 hearing, he continued to socialize with
15 friends, one-on-one and in different settings, including outside of his home. AR
16 1192–93. He plays video games, browses the internet, and chats on a computer. AR
17 1167. The Court agrees with the Commissioner that these activities tend to show
18 physical and mental abilities greater than the totally debilitating impairment to
19 which Plaintiff testified. AR 1170 (Plaintiff testifying that on bad days he “sit[s] in
20 [his] chair”); *see* ECF No. 12 at 6.

1 In addition, the ALJ reasoned that “the record documents persistent symptoms
2 but shows stability with treatment and reflects modest mental status examination
3 findings with largely intact memory and concentration, as well as appropriate
4 interpersonal interactions and behavior with providers.” AR 1128. Plaintiff claimed
5 at the hearings in 2021 that he was “never” able to complete a video game because
6 he got frustrated and would struggle with his concentration while playing dice. AR
7 1159, 1192. However, Plaintiff performed tasks requiring concentration “within
8 normal limits” on mental status examinations and “had no difficulty” following the
9 conversation with the examiner. AR 556, 1907.

10 Plaintiff also testified that he has an anxiety attack “every time” he leaves the
11 house or thinks about leaving the house. AR 1170. This assertion contrasts with the
12 multiple records indicating unremarkable mental status evaluation findings and
13 reports to providers of decreased anxiety and relief from other relevant mental health
14 symptoms. *See* AR 1127.

15 The ALJ’s thorough review of the medical evidence in comparison to
16 Plaintiff’s statements amounts to specific, clear, and convincing reasons for not fully
17 crediting Plaintiff’s complaints. Substantial evidence supports the ALJ’s conclusion
18 that the record does not corroborate the severity of the symptoms that Plaintiff
19 alleges with respect to the relevant period.

1 The Court finds no error based on the ALJ's treatment of Plaintiff's subjective
2 symptom testimony and, therefore, denies summary judgment to Plaintiff, and grants
3 summary judgment to Defendant, on this ground.

4 ***Medical Opinions***

5 Plaintiff alleges that the ALJ erred in his treatment of five medical opinions:
6 medical expert Omar Hussamy, M.D.; examining psychologist R. Cline, Psy.D.;
7 examining physician M. Liddell, M.D.; treating therapist M. Neil Anderson,
8 LICSW; and evaluating psychologist Thomas Genthe, Ph.D. ECF No. 11 at 7–18.
9 The Commissioner responds that the ALJ's evaluation of the medical opinions was
10 reasonable and supported by substantial evidence. ECF No. 12 at 7–11.

11 Plaintiff applied for SSI and DIB on approximately January 19, 2017, alleging
12 onset on March 1, 2016. AR 17, 301–11. Revisions to rules guiding the evaluation
13 of medical evidence that took effect on March 27, 2017, do not apply to claims filed
14 before March 27, 2017, and the “treating physician rule” under the previous
15 regulations instead applies. *See* 20 C.F.R. § 416.927.

16 Under the treating physician rule, “the weight afforded to a medical opinion
17 depends upon the source of that opinion. A treating physician's opinion, for
18 example, is entitled to greater weight than the opinions of nontreating physicians.”
19 *Coleman v. Saul*, 979 F.3d 751, 756 (9th Cir. 2020). An ALJ must consider the
20 acceptable medical source opinions of record and assign weight to each. 20 C.F.R.

1 §§ 404.1527(c), 416.927(c). This responsibility often involves resolving conflicts
2 and ambiguities in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722
3 (9th Cir. 1998). To reject the contradicted opinion of a treating or examining
4 physician, the ALJ must provide specific and legitimate reasons for doing so.
5 *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995). “An ALJ can satisfy the
6 substantial evidence requirement by setting out a detailed and thorough summary
7 of the facts and conflicting clinical evidence, stating his interpretation thereof, and
8 making findings.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (citing
9 *Reddick*, 157 F.3d at 725).

10 An ALJ may discount an otherwise valid medical source opinion as overly
11 conclusory, poorly supported by or inconsistent with the objective medical record,
12 or inordinately reliant on a claimant’s self-reported symptoms, provided the ALJ
13 provides clear and convincing reasons to discredit the symptom allegations. *See*,
14 *e.g.*, *Coleman v. Saul*, 979 F.3d 751, 757–58 (9th Cir. 2020).

15 The Court finds no error based on the ALJ’s treatment of Plaintiff’s subjective
16 symptom testimony and, therefore, denies summary judgment to Plaintiff, and grants
17 summary judgment to Defendant, on this ground.

18 **Dr. Hussamy**

19 Plaintiff argues that the ALJ improperly rejected Dr. Hussamy’s opinion
20 regarding Plaintiff’s physical limitations. ECF Nos. 11 at 5; 13 at 2–3. Plaintiff
21

1 asserts that Dr. Hussamy’s opinion of disabling limitations was based “on his
2 review of exhibits B-1F and B-57F of the record, and that these medical records
3 contained sufficient information to allow him to form an opinion.” ECF No. 11 at
4 8 (citing AR 1181–82). Plaintiff maintains that the ALJ should have inquired
5 about the basis for Dr. Hussamy’s opinion regarding Plaintiff’s standing and
6 walking restrictions before using a lack of support for those limitations as a reason
7 to reject Dr. Hussamy’s opinion. *Id.* at 8–9.

8 The Commissioner responds that the ALJ “was well within reason for
9 having hesitation in accepting Dr. Hussamy’s opinion regarding Plaintiff’s
10 significant standing, walking, and sitting limitations without any specific support.”
11 ECF No. 12 at 8–9. Furthermore, the Commissioner asserts, the ALJ cited to
12 records that consistently document normal lower extremity strength, sensation, and
13 gait, and no focal neurologic deficits that would support extreme limitations in
14 sitting, standing, or walking. *Id.* at 9 (citing AR 1122–25).

15 Dr. Hussamy completed interrogatories in January 2021. AR 2443–46.³ Dr.
16 Hussamy opined that Plaintiff did not meet or equal any listing. AR 2444–45. Dr.
17 Hussamy did not list any impairments that he identified from his review of the

18 ³ The Commissioner refers to opinions by Dr. Hussamy elicited at “a previous
19 hearing in March 2016[.]” ECF No. 12 at 8. However, the Court agrees with
20 Plaintiff that the only hearing testimony from Dr. Hussamy in the record is from
21 December 9, 2021. *See* ECF No. 13 at 2; AR 1181–86.

1 medical record. *See* AR 2443–46. However, in response to a prompt to identify
2 “any functional limitations or restrictions” resulting from any impairments that Dr.
3 Hussamy identified from Plaintiff’s medical record, Dr. Hussamy opined that
4 Plaintiff could frequently lift and carry up to ten pounds frequently and twenty
5 pounds occasionally and could climb, balance, stoop, kneel, crouch, and crawl.
6 AR 2446.

7 At the December 9, 2021 hearing, Dr. Hussamy acknowledged that he had
8 “mistake[nly]” omitted any impairments and added that he found “fractures of
9 lower limb, DDD disorders of back, depressive bipolar and related disorders,
10 anxiety, and obsessive-compulsive disorders, and substance addiction disorders”
11 supported by the medical record. AR 1182. The ALJ asked Dr. Hussamy for his
12 opinions as to Plaintiff’s capacity to stand and walk in an eight-hour day, and Dr.
13 Hussamy opined that Plaintiff could “[s]it for four hours, stand for two hours, and
14 walk for two hours, and he would need a five-minute break every hour for each of
15 those periods.” AR 1183. Dr. Hussamy added that the break would need to
16 include a postural change, but that Plaintiff does not use or require any assistive
17 device. AR 1183–84. In response to questioning from Plaintiff’s counsel, Dr.
18 Hussamy opined that Plaintiff would miss two to three days each month from a
19 full-time work schedule. AR 1185. When pressed by the ALJ to clarify the cause
20 of Plaintiff’s likely absences, Dr. Hussamy responded that he could reasonably
21

1 predict that Plaintiff would have a flareup of his chronic pain and lower back
2 degenerative disc condition “two to three times” per month, on average. AR 1185–
3 86.

4 The ALJ gave Dr. Hussamy’s opinion regarding Plaintiff’s physical
5 limitations “some, but not great weight.” AR 1129. The ALJ found Dr.
6 Hussamy’s opinion to be persuasive “to the extent that he reviewed the entire
7 record in formulating his opinion.” AR 1129. However, the ALJ further found
8 that Dr. Hussamy did not offer specific support for the significant standing and
9 walking limitations that he assessed. AR 1129. The ALJ reasoned, as follows:

10 For example, the doctor failed to provide specific support for the
11 significant standing and walking limitations he assessed, and as
12 discussed above, the record consistently documents intact lower
13 extremity strength and sensation, as well as normal gait. In addition,
14 the record repeatedly notes no focal neurologic deficits that would
15 support the limitations he assessed regarding sitting, standing, or
16 walking. The record as a whole documents general stability of the
17 claimant’s physical impairments and improvement with medications
18 and injections, with modest examination findings that are not consistent
19 with the extent of the limitations assessed by Dr. Hussamy.
20 Furthermore, the record does support some environmental limitations
21 given the claimant’s impairments and medication side effects. The
undersigned also notes that there is no support in the record for the
opinion that the claimant would likely miss two to three days of work
per month due to his impairments, as the longitudinal record documents
general stability of the claimant’s conditions and consistently modest
examination findings. Moreover, the claimant’s activities, including
independently performing household chores, riding his motorcycle, and
hiking are not consistent with the extent of the limitations alleged.
Finally, the undersigned notes that in the interrogatories Dr. Hussamy
completed, he did not opine that the claimant would have absences from
work, and he did not provide a date upon which the alleged work

1 absences began; this may have been after the established onset date, as
2 the claimant testified to a worsening of his condition. For these reasons,
Dr. Hussamy's opinion is not given great weight.

3 AR 1129 (citing AR 2442–46).

4 Plaintiff contends that the ALJ was obligated to develop the record further
5 before he found Dr. Hussamy's opinion less persuasive for "fail[ing] to provide
6 support for the significant standing and walking limitations." ECF No. 11 at 8
7 (citing AR 1129). An ALJ must assess a claimant's RFC "based on all of the
8 relevant medical and other evidence." 20 C.F.R. §§ 404.1545(a)(3), 416.945(a)(3).
9 The claimant "is ultimately responsible for providing the evidence to be used in
10 making the RFC finding," but an ALJ has "a special duty to fully and fairly
11 develop the record and to assure that the claimant's interests are considered."
12 *Widmark v. Barnhart*, 454 F.3d 1063, 1068 (9th Cir. 2006) (citations omitted). "An
13 ALJ's duty to develop the record further is triggered only when there is ambiguous
14 evidence or when the record is inadequate to allow for proper evaluation of the
15 evidence." *Mayes v. Massanari*, 276 F.3d 453, 460 (9th Cir. 2001). The Court
16 defers to the ALJ's RFC determination "if the ALJ applied the proper legal
17 standard and his decision is supported by substantial evidence." *Bayliss v.*
18 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

19 The interrogatories that the ALJ sent to Dr. Hussamy asked for Dr.
20 Hussamy's opinion for the period of "February 5, 2016 through October 11, 2019.

1 Alleged Onset Date: March 1, 2016[.]” AR 2444. The ninth interrogatory asked
2 Dr. Hussamy to “identify *any* functional limitations or restrictions that result from
3 the impairment(s)” that Dr. Hussamy had identified based on his review of
4 Plaintiff’s medical record, including “such things as the ability to sit, stand, walk,
5 lift, carry, push, and pull.” AR 2446 (emphasis added). Dr. Hussamy did not
6 identify any sitting, standing, or walking limitations in the interrogatories, but did
7 identify such a limitation during his hearing testimony, thought he was reviewing
8 the same medical record in formulating both sets of limitations. At the hearing, Dr.
9 Hussamy did not identify any particular records that supported either those sitting,
10 standing, and walking limitations, or his opinion that Plaintiff would miss two to
11 three days of work per month. *See* AR 1183–86.

12 Plaintiff has not shown that the record was inadequate for the ALJ to
13 evaluate the evidence, and, therefore, the Court does not find any deficiency in the
14 ALJ’s duty to further develop the opinion evidence before reaching a decision. *See*
15 *Mayes*, 276 F.3d at 460. Furthermore, the Court finds that the ALJ offered
16 sufficient reasons, supported by substantial evidence, in evaluating Dr. Hussamy’s
17 opinion.

18 **Drs. Cline and Liddell, and Mr. Anderson, LICSW**

19 Plaintiff argues that the ALJ erred by failing to fully credit the opinions of
20 psychological examiners Drs. Cline and Liddell, and treating therapist Mr.

1 Anderson. ECF Nos. 11 at 14–17. Plaintiff maintains that the fact that all three
2 mental health professionals found that Plaintiff would have issues performing work
3 activities over a normal workday/work week favors giving the opinions greater
4 weight and that the ALJ’s determination that none of these opinions warranted
5 weight was contrary to the Social Security regulations. ECF No. 13 at 3–4 (citing
6 20 C.F.R. § 404.1527(c)(4)). Plaintiff also alleges error by the ALJ in discounting
7 the opinions for being “based” on Plaintiff’s subjective reports when the medical
8 sources also discussed their own observations or diagnoses, in addition to the self-
9 reports. ECF No. 12 at 12, 15. Plaintiff cites to portions of Plaintiff’s treatment
10 records that Plaintiff maintains are consistent with Plaintiff’s self-reports to
11 examining psychologist Dr. Cline and his presentation at that examination. *Id.* at
12 12 (citing AR 702, 740, 753 for appointments where Plaintiff presented as angry;
13 AR 438, 454, 483, 518, 561, 610, 702, 739, 743, and 781, where Plaintiff presented
14 as irritable; AR 485, 753, where Plaintiff presented as upset, and AR 343, 751,
15 where Plaintiff presented as agitated). Plaintiff adds that Dr. Cline’s rule-out
16 diagnosis of malingering was not a diagnosis and merely a finding that ““there is
17 evidence that the criteria for a diagnosis *may* be met, but more information is
18 needed in order to rule it out.”” ECF No. 11 at 13–14 (quoting *Carrasco v. Astrue*,
19 2011 WL 499346, at *4 (C.D. Cal. Feb. 8, 2011) (unpublished)). Plaintiff also
20 argues that the ALJ wrongly discounted Mr. Anderson’s opinion on the basis that it
21

1 was in check-box form, without a narrative explanation, as the type of form alone
2 is not a valid reason to reject an opinion. *Id.* at 16–17.

3 The Commissioner responds that the ALJ provided valid bases, and cited to
4 substantial evidence, to discount the mental health providers’ opinions when he:
5 (1) found that their opinions were inconsistent with the providers’ own
6 examination or treatment notes; (2) noted that none of the providers’ opinions were
7 well explained; (3) found that the mental status examinations found only modest
8 limitations regarding Plaintiff’s cognitive abilities and social interactions; and (4)
9 found that the providers’ opinions were inconsistent with the overall record) ECF
10 No. 12 at 10–11 (citing *Tommasetti*, 533 F.3d at 1041; 20 C.F.R. §§
11 404.1527(c)(4), 416.927(c)(4)).

12 Dr. Cline evaluated Plaintiff for the Washington State Department of Social
13 and Health Services (“DSHS”) on February 28, 2017. AR 802–06. Dr. Cline
14 found Plaintiff to have a marked limitation in understanding, remembering in
15 persisting in tasks by following detailed instructions and a severe limitation in:
16 communicating and performing effectively in a work setting; maintaining
17 appropriate behavior in a work setting; and completing a normal work day and
18 work week without interruptions from psychologically-based symptoms. AR 804–
19 05. Dr. Cline found Plaintiff to have a mild or no limitation or a moderate

1 limitation in all other basic work activities. AR 804–05. Dr. Cline rated Plaintiff
2 markedly limited overall. AR 805.

3 Dr. Liddell completed an evaluative examination of Plaintiff on May 6,
4 2017. AR 557–62. Dr. Liddell also noted that Plaintiff’s presentation at the
5 examination was “slightly odd and dramatic” and that “[a]dditional collateral
6 information would be useful in order to obtain a clearer picture as [Dr. Liddell]
7 worr[ies] about the reliability of [Plaintiff’s] report.” AR 562. By way of a
8 functional assessment, Dr. Liddell concluded that Plaintiff’s “psychiatric
9 symptoms including irritability and poor distress tolerance would continue to cause
10 limitations in his ability to accept instructions from supervisors, perform work
11 activities on a consistent basis, maintain regular attendance in the workplace,
12 complete a normal workday or workweek without interruptions, and manage usual
13 stress encountered in the workplace.” AR 562.

14 Mr. Anderson completed a medical source statement on December 11, 2017,
15 and again on January 2, 2020, on September 2, 2020, and on December 28, 2020.
16 AR 675–78, 1525–29, 1530–34, and 2427–32. Mr. Anderson also completed a
17 letter on February 16, 2021. AR 2452. On the medical source statements, Mr.
18 Anderson made summary conclusions regarding Plaintiff’s limitations in twenty
19 activity categories related to an average workday and workweek. Mr. Anderson
20 indicated that Plaintiff is markedly or severely limited in half of those categories.

1 AR 675–67. Mr. Anderson further opined that Plaintiff satisfies the “B” and “C”
2 criteria of the mental listings and that Plaintiff would likely be off task over thirty
3 percent of the time and miss four or more days per month if he were to attempt to
4 work a 40-hour per week work schedule. AR 677. In the February 2021 letter,
5 Mr. Anderson wrote that Plaintiff’s symptoms related to his mental health
6 diagnoses “are well-controlled through a combination of medication and therapy.”
7 He continued, “[Plaintiff] has consistently exhibited a high level of responsibility
8 for his condition, complies with treatment recommendations, and does not
9 currently pose a threat to himself or others.” AR 2452.

10 The ALJ found that Dr. Cline’s and Mr. Anderson’s opinions should not be
11 given weight and that Dr. Liddell’s opinion should not be given “great weight
12 overall.” AR 1130–32. The ALJ reasoned that none of the three mental health
13 sources sufficiently explained his or her opinions or provided objective support for
14 his or her conclusions. AR 1130–32. The ALJ further reasoned that the
15 examiners’ and treatment provider’s opinions were inconsistent with Plaintiff’s
16 treatment records and modest mental status examination findings. AR 1130–32.

17 First, the ALJ identified mental examination findings generally within normal
18 limits by all three mental health sources. Dr. Liddell recorded that Plaintiff had
19 “good eye contact, was cooperative though irritable, was dramatic in his description
20 of his history of aggression (almost in a comical manner),” but Plaintiff nonetheless
21

1 had “good adherence to social conventions . . . appropriate posture,” and “coherent,
2 logical, and linear” thought process. AR 560. Apart from poor insight into his
3 overall mental health, Plaintiff’s intellectual functioning also was unremarkable
4 when examined by Dr. Liddell, with the ability to recall and “give a clear and
5 sequential history narrative” and “good persistence in attempting tasks” AR
6 561. Dr. Cline’s examination found Mr. Anderson’s concentration to be within
7 normal limits, and Plaintiff’s performance with respect to memory was inconsistent
8 in a manner that indicated to Dr. Cline that malingering could not be ruled out. AR
9 806.

10 Second, substantial evidence supports the ALJ’s finding that the mental health
11 source’s opinions were incongruous with the longitudinal record and based heavily
12 on Plaintiff’s self-reported symptoms. *See* AR 1126–32. ALJ Meyers cited to
13 records, many of which were created by Mr. Anderson, that indicate that Plaintiff
14 presented at appointments in a stable mood and able to engage in “appropriate
15 interpersonal interactions and behavior with providers.” AR 1126–29 (citing, e.g.,
16 AR 845–46, 851, 860–62, 865, 870, 875, 885, 1592–93, 1610–11). The records
17 cited span the relevant period. *See id.* ALJ Meyers also correctly noted that the
18 primary source of information for Dr. Liddell was Plaintiff himself. *See* AR 557–60
19 (indicating that the sections summarizing Plaintiff’s medical, psychiatric, social, and
20 substance use history, and Plaintiff’s functional abilities were wholly based on
21

1 Plaintiff's reports). Dr. Cline also wrote that she reviewed only one previous
2 assessment of Plaintiff, from 2014, and otherwise relied on Plaintiff's self-report.
3 AR 802. The Court has already found that the ALJ offered adequate reasons for
4 discounting Plaintiff's subjective symptom testimony. Moreover, the examiners
5 themselves expressed doubt regarding whether they could rely on Plaintiff's self-
6 report, with Dr. Cline concluding that she could not rule out malingering and Dr.
7 Liddell wrote: "Additional collateral information would be useful in order to obtain
8 a clearer picture as I worry about the reliability of [Plaintiff's] report." AR 815.
9 Accordingly, the Court also finds no error in discounting the mental health source
10 opinions for relying primarily on Plaintiff's subjective complaints.

11 Lastly, ALJ Meyers also reasoned that the mental health sources' opinions are
12 not entitled to weight because they lack any narrative explanation. *See* AR 1130–32.
13 Courts have found no error when ALJs have discounted an opinion that does not
14 explain its conclusions. *Molina*, 674 F.3d at 1111–12 (ALJ properly rejected
15 physician assistant's opinion where it consisted of a check-the-box form and failed to
16 provide supporting reasoning); *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)
17 (ALJ permissibly rejected psychological evaluations "because they were check-off
18 reports that did not contain any explanation of the bases of their conclusions"); *De*
19 *Guzman v. Astrue*, 343 F. App'x 201, 209 (9th Cir. 2009) (ALJ was "free to reject"
20 doctor's check-off report that did not explain basis for conclusions).

1 Thus, cumulatively, the ALJ has provided clear and convincing reasons, let
2 alone specific and legitimate reasons, for discounting Dr. Cline's, Dr. Liddell's, and
3 Mr. Anderson's opinions. *See Molina v. Astrue*, 674 F.3d 1104, 1111–12 (9th Cir.
4 2012) (recognizing that a conflict with treatment notes is a germane reason to reject
5 a treating physician's assistant's opinion); *Valentine v. Comm'r*, 574 F.3d 685, 692–
6 93 (9th Cir. 2009) (holding that a conflict with treatment notes is a specific and
7 legitimate reason to reject treating physician's opinion); *Bayliss v. Barnhart*, 427
8 F.3d 1211, 1216 (9th Cir. 2005) (contradiction between physicians opinion and
9 treatment notes a clear and convincing reason to discount treating physician); *Batson*
10 *v. Comm'r*, 359 F.3d 1190, 1196 (9th Cir. 2004) (ALJ may discredit treating
11 physicians' opinions that are unsupported by objective medical findings or the record
12 as a whole).

13 **Dr. Genthe**

14 Plaintiff argues that the ALJ did not provide valid reasons for rejecting Dr.
15 Genthe's disabling opinion. ECF No. 11 at 17–18. Plaintiff asserts that “the main
16 problem that [Plaintiff] noted in 2019 was ‘panic attacks because of PTSD.’” *Id.* at
17 18 (citing AR 1902). Plaintiff faults the ALJ for his finding that Dr. Genthe's
18 opinion was “‘not consistent’ with the ‘unremarkable mental status findings he
19 noted,’ including normal memory and concentration” because “[t]he fact that these
20 symptoms were not evident during a single, short evaluation is not inconsistent with
21

1 the intermittent nature of these symptoms.” *Id.* (quoting AR 1131). Plaintiff also
2 argues that the ALJ erred in concluding that Dr. Genthe “‘relied heavily’ on
3 Plaintiff’s subjective reports which were unreliable because [Plaintiff] was able to
4 interact appropriately with providers, friends, and family.” *Id.* (citing AR 1131).

5 The Commissioner did not respond to Plaintiff’s arguments regarding Dr.
6 Genthe specifically, but, as discussed above, did address the ALJ’s reasoning
7 regarding mental health source opinions in Plaintiff’s record being inconsistent with
8 “modest mental status examination findings with largely intact memory and
9 concentration, as well as appropriate interpersonal interactions and behavior with
10 providers.” *See* ECF No. 12 at 5 (citing AR 1125–27).

11 Dr. Genthe evaluated Plaintiff on February 14, 2019, for DSHS. AR 1902–
12 07. Dr. Genthe opined that Plaintiff has a marked limitation in asking simple
13 questions and requesting assistance and a severe limitation in: communicating and
14 performing effectively in a work setting; maintaining appropriate behavior in a work
15 setting; and completing a normal work day and work week without interruptions
16 from psychologically based symptoms. AR 1904–05. Dr. Genthe found Plaintiff to
17 have no or a mild limitation or a moderate limitation in all remaining basic work
18 activities. AR 1904–05. Dr. Genthe found Plaintiff to be severely limited overall.
19 AR 1905.

1 The ALJ gave Dr. Genthe's opinion "little weight." AR 1131. ALJ Meyers
2 reasoned, similar to the reasoning he offered for the opinions discussed above: "Dr.
3 Genthe did not provide any explanation or support for the limitations he assessed,
4 and they are not consistent with the largely unremarkable mental status examination
5 findings he noted, including memory and concentration within normal limits, and
6 that the claimant was 'generally open, cooperative, and friendly.'" AR 1131 (citing
7 AR 1906)). ALJ Meyers continued, "Given the lack of support and inconsistency
8 with the findings Dr. Genthe noted, it is likely that he relied heavily on the
9 claimant's reported symptoms, which are not entirely corroborated by the record as a
10 whole, which establishes some limitations in social interaction, but shows that the
11 claimant consistently engaged appropriately with treating and examining providers,
12 and also spent time with friends and family." AR 1131.

13 The Court finds that the ALJ provided clear and convincing reasons, let alone
14 specific and legitimate reasons, for discounting Dr. Genthe's opinion on the same
15 bases that the Court discussed above. As with the above-discussed mental health
16 sources, Dr. Genthe's examination of Plaintiff noted thought process and content,
17 orientation, perception, memory, concentration, and abstract thought within normal
18 limits. AR 1906–07 (finding only Plaintiff's insight and judgment to be outside of
19 normal limits). Dr. Genthe indicated that "[n]o records were provided [to him] for
20 review." AR 1902. Therefore, the ALJ relied on substantial evidence in the record
21

1 in finding that Dr. Genthe exceedingly relied Plaintiff's appropriately discounted
2 subjective complaints and that Dr. Genthe did not explain or rely on the
3 unremarkable mental status examination findings or objective evidence in Plaintiff's
4 longitudinal record to reach his conclusions.

5 Having found no error based on the treatment of medical source opinions, the
6 Court denies Plaintiff's Motion for Summary Judgment on this last remaining issue
7 and grants summary judgment to the Commissioner.

8 CONCLUSION

9 Having reviewed the record and the ALJ's findings, this Court concludes that
10 the ALJ's decision is supported by substantial evidence and free of harmful legal
11 error. Accordingly, **IT IS HEREBY ORDERED** that:

12 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.

13 2. Defendant's Motion for Summary Judgment, **ECF No. 12**, is

14 **GRANTED**.

15 4. Judgment shall be entered for Defendant.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order, enter judgment as directed, provide copies to counsel, and **close the file** in
18 this case.

19 **DATED** February 2, 2023.

20 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
21 Senior United States District Judge